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COURT URGED TO UPHOLD CITY'S EFFORTS TO RESTRICT HOUSING FOR ILLEGAL ALIENS

(Lozano v. City of Hazleton)

The Washington Legal Foundation (WLF) this week urged the U.S. Court of Appeals for the Third Circuit in Philadelphia to uphold efforts by the City of Hazleton, Pennsylvania to prevent illegal aliens from renting housing within the city.

In a brief filed in *Lozano v. City of Hazleton*, WLF argued that local governments have an important role to play in enforcing our immigration laws and that Congress has never indicated that it seeks to confine immigration enforcement to federal officials only. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

“Immigrants play a vital role in our society, and those who come here legally should be welcomed warmly,” said WLF Chief Counsel Richard Samp after filing WLF’s brief. “But the rule of law is eroded unless we take effective steps to slow down the flood of illegal entry into the country, and the only effective way of doing so is to enlist local government officials in the effort,” Samp said.

The case involves immigration enforcement ordinances passed by Hazleton, a Pennsylvania city that has experienced a marked influx of illegal aliens within the past decade. The ordinances focus on employment (by imposing sanctions on employers who hire and/or continue to employ aliens determined by the federal government to be in the U.S. illegally) and on housing (by requiring those seeking rental housing in the city to provide evidence of their legal status and by imposing sanctions on landlords who knowingly rent to illegal aliens). Hazleton does not on its own determine the immigration status of aliens; rather, it relies on federal officials to make that determination. WLF’s brief addresses only the housing provisions of the ordinances.

In July 2007, a federal district court judge permanently enjoined enforcement of the Hazleton ordinances. He struck down the ordinances on multiple grounds, including that they were preempted by federal law (because, he concluded, they conflicted with enforcement schemes established by Congress) and that they denied landlords and aliens due process of law. Hazleton appealed that decision to the Third Circuit.

In its brief, WLF argued that the plaintiffs did not even have standing to challenge the ordinances. Noting that the ordinances have not yet taken effect, WLF argued that the plaintiffs failed to demonstrate that they have been injured and thus should not be permitted to continue with the suit.

On the merits, WLF argued that when, as here, a local government is regulating an area (housing) over which it traditionally has exercised its police powers, the presumption is that Congress has *not* intended to preempt local regulation – unless Congress has unmistakably expressed that intent. WLF argued that to the extent that Congress has expressed an intent one way or the other, it has indicated that it *encourages* State and local governments to engage in regulation of this type, in order to reduce the incentives for aliens to come to this country illegally.

WLF also argued that the plaintiffs had not demonstrated a due process violation. WLF argued that the Due Process Clause grants the Plaintiffs no substantive rights but instead merely provides them with a right to a meaningful hearing before they can be deprived of housing. WLF argued that the ordinances meet that standard – they provide tenants with a hearing at which they may attempt to demonstrate that they are not, in fact, illegal aliens.

WLF is a non-profit public interest law and policy center based in Washington, D.C., with supporters nationwide. WLF has appeared in courts across the country to ensure that governments at all levels possess the resources to combat illegal immigration and to prevent aliens from seeking to vote illegally.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its web site, www.wlf.org.